

1972

c 95 The Municipal Elections Act, 1972

Ontario

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CHAPTER 95

An Act respecting Municipal Elections

*Assented to June 30th, 1972
Session Prorogued December 15th, 1972*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

1. "advance poll" means a poll held under section 64;
2. "assessment commissioner" in relation to a municipality means the assessment commissioner appointed under *The Assessment Act* for the assessment region in which the municipality is situate; R.S.O. 1970, c. 32
3. "assistant returning officer" means a person appointed by the clerk to assist him in the conduct of the election;
4. "assistant revising officer" means a person appointed by the clerk to assist him in the revision of the list of electors;
5. "candidate" means a person who is nominated for election to office in accordance with this Act and whose nomination is certified by the clerk;
6. "clerk" with respect to a municipality means the clerk of the municipality;
7. "constable" means a constable or a person appointed as a constable by the clerk or the deputy returning officer to maintain peace and order at an election;
8. "corrupt practice" means any act or omission in connection with an election in respect of which an offence is provided under the *Criminal Code* (Canada) or which is a corrupt practice under this Act; R.S.C. 1970, c. C-34
9. "deputy returning officer" means a deputy returning officer appointed for a polling place under this Act;

10. "election" means an election governed by this Act;
11. "election assistant" means a person appointed by the clerk to assist in the conduct of an election;
12. "election year" means a year in which a regular election is held in accordance with the provisions of this Act;
13. "elector" means a person entitled under this Act to vote in an election;
14. "enumerated" means enumerated under *The Assessment Act*;
15. "local board" means a local board as defined in *The Municipal Affairs Act*;
16. "locality" means territory without municipal organization that is deemed a district municipality under *The Secondary Schools and Boards of Education Act* and *The Separate Schools Act*;
17. "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
18. "municipality" means a city, town, village or township;
19. "new election" means an election other than a regular election;
20. "nomination day" means the last day for filing nominations;
21. "oath" includes an affirmation;
22. "office" means an office, the election to which is governed by this Act;
23. "owner or tenant" means a person enumerated as owner or tenant of land separately assessed or liable to be separately assessed under *The Assessment Act*;
24. "polling day" means the day on which the poll is to be taken under this Act;
25. "polling list" means the list of electors for each polling subdivision revised and certified by the clerk;

R.S.O. 1970,
c. 32

R.S.O. 1970,
c. 118

R.S.O. 1970,
cc. 425, 430

26. "polling subdivision" means a polling subdivision established by the clerk under this Act;
27. "preliminary list" means a preliminary list of electors;
28. "prescribed" means prescribed by the Minister;
29. "public school elector" means an elector who is not a separate school elector;
30. "quorum" means a majority of the members of council or of a local board or the trustees of a police village, as the case may be;
31. "regular election" means an election required to be held biennially under section 10 of this Act;
32. "residence", and similar expressions used in relation to a person, means his true, fixed, permanent home or lodging place to which whenever he is absent he has the intention of returning, subject to the following rules:
 - (a) The place where a person's family resides shall be his residence unless he takes up or continues his residence at some other place with the intention of remaining there, in which case he shall be deemed to be a resident of such other place.
 - (b) The place where a person occupies a room or part of a room as a regular lodger or to which he habitually returns not having any other permanent lodging place, shall be deemed to be his residence;
33. "scrutineer" means any person appointed as a scrutineer by a candidate under section 6 or by a council under section 7;
34. "separate school elector" means an elector who is a Roman Catholic separate school supporter or who is a Roman Catholic and the wife or husband of such supporter and any person entitled to be a separate school elector under *The Separate Schools Act*.

R.S.O. 1970,
c. 430

APPLICATION OF ACT

2.—(1) Notwithstanding any other general or special Act, but subject to subsection 2, this Act applies to and governs all elections,

Application
of Act

(a) to the offices of,

- (i) member of the council of a municipality,
- (ii) member of the council of a regional municipality where such office is required to be filled by a vote of the electors of an area municipality,
- (iii) trustee of a police village,
- (iv) member of a local board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality;

(b) to obtain the assent of electors on any by-law required or authorized by law to be submitted for their assent at an election; and

(c) to obtain the opinion of the electors on any question required or authorized by law to be submitted to the electors at an election except a question under *The Liquor Licence Act*.

R.S.O. 1970,
c. 250

Application
to newly
created
regional
municipi-
palities

(2) This Act does not apply to the first elections of the members of the council of a regional municipality or an area municipality therein or of the local boards thereof where the Act creating the regional municipality otherwise provides.

ELECTION OFFICIALS

Returning
and
revising
officer

3.—(1) Subject to subsections 2 and 3, the clerk of a municipality is the returning officer and revising officer for the purpose of the conduct of elections within the municipality or a part thereof.

Returning
officer in
police
village

(2) For the purpose of elections of trustees of a police village, the clerk of the municipality in which the police village is located shall be the returning officer for the election and where the police village is located in two or more municipalities,

(a) the nominations for trustees shall be filed with the clerk of the municipality having the largest number of electors of the police village who shall send to the clerk of each municipality concerned by registered mail within forty-eight hours after the closing of nominations the names of the candidates; and

- (b) the clerk of each other municipality in which part of the police village is located shall be the returning officer for the vote to be recorded in his municipality and he shall forthwith report the vote recorded to the returning officer referred to in clause *a* who shall prepare the final summary and announce the vote.

(3) The clerks of municipalities to which subsections 21, 25 and 27 of section 38 of *The Secondary Schools and Boards of Education Act* and subsections 19 and 21 of section 90 of *The Separate Schools Act* apply shall perform the duties as returning officers for the purposes of an election under this Act as are specified in those provisions.

Clerks,
duties in
relation to
school
boards

R.S.O. 1970,
cc.425, 430

4. (1) The clerk of every municipality shall for the purposes of an election appoint a deputy returning officer and a poll clerk for each polling place established in the municipality and, as far as is practicable, the deputy returning officers and poll clerks shall be appointed for polling places for the polling subdivisions in which they reside.

D.R.O. and
poll clerk

(2) If a deputy returning officer or poll clerk signifies to the clerk that he will not act, the clerk shall appoint another person to act in his place.

Where
unable
to act

(3) If a deputy returning officer or poll clerk does not attend at the opening of the poll, the clerk shall appoint another person to act in his place.

Non-
attendance
of D.R.O.,
poll clerk

(4) If a deputy returning officer through illness or for any other reason becomes unable to perform his duties on polling day, the poll clerk shall perform his duties and exercise all his powers unless the clerk appoints some other person as deputy returning officer for the polling place.

Poll clerk
to act for
D.R.O.

(5) The clerk may appoint election assistants, assistant returning officers, and assistant revising officers to assist him in the performance of his duties and provide for such clerical and other assistance as is necessary for such purpose.

Assistants

(6) The poll clerk and an election assistant, if any, shall assist the deputy returning officer in the performance of the duties of his office and shall obey his orders.

Duties of
poll clerk

(7) Every deputy returning officer, poll clerk, election assistant, assistant returning officer, assistant revising officer, scrutineer, constable and other person authorized to attend at a polling place shall, before entering upon his duties, take and subscribe an oath in the prescribed form.

Oath

Oath of
D.R.O.

(8) The appointment and oath of the deputy returning officer under subsection 7 shall be endorsed upon or attached to the poll book for the polling place for which he is appointed.

Who may
administer
oaths

5.—(1) Except where otherwise provided, an oath may be administered by any person authorized by law to administer oaths in the Province of Ontario.

Idem

(2) The clerk may administer any oath required by this Act, and deputy returning officers and poll clerks may administer any such oath except an oath to be taken by the clerk.

No charge

(3) Every person administering an oath under or for the purposes of this Act shall administer the oath gratuitously.

Scrutineers
appointed by
candidate

6.—(1) Each candidate may appoint such number of persons who are at least sixteen years of age as he considers advisable as scrutineers to represent him in a polling place and at the counting of votes under this Act.

Limit on
number
present

(2) Not more than one scrutineer representing each candidate may be present for any of the purposes specified in subsection 1 at any time.

Scrutineers
appointed
by council

7.—(1) The council of a municipality may, if requested to do so, by resolution appoint as scrutineers in relation to voting on any by-law or question submitted to the electors at an election two persons to attend at the final summing up of the votes by the clerk and two persons to attend at each polling place, one such person in each case on behalf of the persons interested in and desirous of promoting the proposed by-law or voting in the affirmative on the question and the other such person on behalf of the persons interested in and desirous of opposing the proposed by-law or voting in the negative on the question.

Production of
appointment

(2) A person appointed as a scrutineer under this section before being admitted to a polling place shall, if so requested, produce and show his appointment to the deputy returning officer for the polling place.

COSTS OF ELECTION

Cost of
election

8.—(1) Except where otherwise specifically provided by this or any other special or general Act, the cost of an election shall be borne by the municipality in which it is held.

Expenses
of officers

(2) The reasonable expenses incurred by a clerk or any other officer for printing, providing ballot boxes, ballot papers, materials for marking ballot paper, and balloting compart-

ments, and for the transmission of packets, and reasonable fees and for allowances for services rendered under this Act or otherwise on account of an election shall be paid by the treasurer of the municipality to the persons entitled thereto.

(3) Where the clerk of a municipality is required to conduct an election of members of a local board other than at a regular election, the board shall forthwith after its organization reimburse the treasurer of the municipality for the cost of employing deputy returning officers, poll clerks and other election officials and for the reasonable expenses incurred by the clerk or any other officer of the municipality for advertising the times and places for nomination and of polls, for printing, for providing ballot boxes, ballot papers, materials for marking ballot papers, and balloting compartments, for the transmission of packets, and for reasonable costs including the cost of printing and distribution of but not preparation otherwise of the polling list. Expenses of by-election of local board

TERM OF OFFICE

9.—(1) Notwithstanding any other general or special Act and except where otherwise specifically provided in this Act, the term of office of all offices, the election to which is governed by this Act, shall be two years, commencing on the first day of January in the year following an election year. Two-year term

(2) The holders of offices hold office until their successors are elected and the newly elected council or local board is organized. Until new council term organized

BIENNIAL ELECTIONS

10.—(1) Subject to subsections 2 and 3, an election shall be held in accordance with this Act in each municipality in the year 1972 and in every second year thereafter for the purpose of electing persons to offices. Election year

(2) Where the term of office of a member of a council or of a local board terminates at the end of the year 1973, no election shall be held under this Act for that office in the year 1972, but an election for such office shall be held in accordance with this Act on the first Monday in December, 1973, and the persons elected at such election shall be elected for the year 1974 only. Where present term terminates in 1973

(3) Where the term of office of a member of a council or of a local board elected before the coming into force of this Act terminates at the end of the year 1974, no election shall be held for that office in the year 1972. where present term terminates in 1974

Vote on
question,
etc.

(4) Where a by-law requires the assent or a question is authorized or required to be submitted to obtain the opinion of the electors, the vote thereon shall be taken at the next regular election unless otherwise provided by order of the Ontario Municipal Board.

POLLING DAY

Polling
day

11. Polling day in a regular election shall be the first Monday in December in each election year.

QUALIFICATION OF ELECTORS

Electors,
resident

12. A person is entitled to be an elector in a municipality if he is not disqualified under this or any other Act or otherwise prohibited by law from voting in the election and if, at any time during the period of enumeration under section 18, he is,

- (a) resident in such municipality;
- (b) a Canadian citizen or other British subject; and
- (c) of the full age of eighteen years.

Non-
resident

13. A person is entitled to be an elector in a municipality if he is not disqualified under this or any other Act or otherwise prohibited by law from voting in the election and is not resident in such municipality at any time during the period of enumeration under section 18 but is at any time during such period,

- (a) the owner or tenant of land in the municipality or the spouse of such an owner or tenant;
- (b) a Canadian citizen or other British subject; and
- (c) of the full age of eighteen years.

Evidence of
citizenship

14. For the purpose of sections 12 and 13, a statutory declaration by a person claiming that he is a Canadian citizen or other British subject is *prima facie* proof of the fact declared to.

QUALIFICATION OF ELECTORS TO VOTE ON MONEY BY-LAWS

Who may
vote on
money
by-laws

15. Every person entitled to be an elector in a municipality under section 12 or 13 is entitled to be an elector to vote on a money by-law submitted for the assent of the electors of the municipality if, he is,

- (a) the owner of land assessed in the municipality; or
- (b) the tenant of land assessed in the municipality under a lease which extends for the time for which the debt or liability to be created or in which the money to be raised by the proposed by-law is payable or for twenty-one years and under which he covenants to pay all municipal taxes in respect of the land other than local improvement rates and he makes and files with the clerk not later than the last day for making complaints for revision of the preliminary list a declaration stating that he is such a tenant.

16.—(1) A corporation that is the owner of land assessed in a municipality on the last assessment roll or is a tenant of such land under a lease that complies with the requirement of clause *b* of section 15 is entitled to nominate a person who is qualified to be an elector under section 12 or 13, to be an elector to vote on a proposed money by-law submitted for the assent of the electors of the municipality. Corporate nominee

(2) A corporation that is the owner of residential property in a municipality consisting of units or apartments that are owned on a co-operative basis may nominate a person who is qualified to be an elector under section 12 or 13, to be an elector to vote on proposed money by-laws submitted for the assent of the electors in the municipality for each such unit or apartment that is separately assessed on the latest assessment roll for the municipality. Idem

(3) Where a corporation entitled to appoint a nominee to vote on its behalf desires to vote on a proposed money by-law, it shall, not later than the day for filing complaints for the revision of preliminary lists as hereinafter provided, file with the clerk of the municipality an appointment in writing of a person to vote on a proposed money by-law as its nominee and on its behalf. Appointment to be filed

POLLING SUBDIVISIONS

17.—(1) Subject to the provisions of subsection 2, the clerk shall divide the municipality into polling subdivisions and shall not later than the first day of June in an election year inform the assessment commissioner of the boundaries of each subdivision. Polling subdivisions

(2) A polling subdivision shall not, Size

- (a) so far as is practicable, contain more than 350 electors; or

- (b) extend beyond the boundaries of one ward or of an electoral district established for the purposes of the election of members to the Assembly.

PREPARATION OF PRELIMINARY LIST OF ELECTORS

Preliminary
list of
electors

18. An assessment commissioner shall, during the period commencing on the Tuesday following the first Monday in September and ending on the second Tuesday of October in an election year, from an enumeration taken during that period, compile for each polling subdivision in each municipality and locality in his assessment region a list containing the name and address of each person who during such period meets the requirements for an elector under section 12 or 13 and such list shall signify opposite the name of an elector,

- (a) who does not reside in the municipality, that he does not so reside;
- (b) who is enumerated as a Roman Catholic separate school supporter, that he is a separate school elector;
- (c) who is a Roman Catholic and the spouse of a Roman Catholic separate school supporter, that such spouse is a separate school elector;
- (d) who is enumerated as a separate school elector in accordance with *The Separate Schools Act*, that he is a separate school elector;
- (e) who is an owner or tenant of land in the municipality, that he is such an owner or tenant.

R.S.O. 1970,
c. 430

For polling
subdivision
where no
wards

19.—(1) In a municipality or locality that is not divided into wards, the name of an elector shall be entered on the preliminary list,

- (a) for the polling subdivision in which the elector resides; or
- (b) if the elector does not reside in the municipality or locality, for the polling subdivision in which he or his spouse is owner or tenant of land.

For one
polling
subdivision
only

(2) The name of an elector shall not be entered under this section on the preliminary list for more than one polling subdivision.

For polling
subdivision
where wards

20.—(1) In a municipality that is divided into wards, the name of an elector shall be entered in the preliminary list,

- (a) where he resides in the municipality, for the polling subdivision in which he resides; or
- (b) where he does not reside in the municipality, for a polling subdivision of a ward in which he or his spouse is the owner or tenant of land.

(2) The name of an elector shall not be entered under this section in the preliminary list for more than one polling subdivision ^{For one polling subdivision} subdivision.

21. The assessment commissioner shall deliver the list of electors prepared by him under sections 18, 19 and 20 to the clerk and, in respect of a locality, to the secretary of the school board on or before the second Tuesday of October in an election year. ^{List delivered to clerk}

PRELIMINARY LIST OF ELECTORS

22. Immediately after receipt of the list of electors from the assessment commissioner, the clerk shall cause the list to be printed or reproduced and such list shall be the preliminary list of electors. ^{Printing of list}

REVISION OF PRELIMINARY LIST OF ELECTORS

23.—(1) Immediately after the printing or reproduction of the preliminary list of electors, the clerk shall, ^{Revision of list}

- (a) fix the last day for filing with the clerk complaints for revision of the list for the purpose of making additions or corrections to or deletions from it and the places at which and the times when revision of the list will be commenced;
- (b) post one copy of the list in a conspicuous place in his office and one copy of the list for each polling subdivision in a conspicuous place in the polling subdivision for which it is prepared; and
- (c) publish notice in a newspaper having general circulation in the municipality, of the date of the posting of the list, the last day for filing complaints, and the places and times at which the revision of the list will be commenced and, where there is no such newspaper, the notice shall be published in such manner as the clerk may direct and shall be posted in at least two conspicuous places in the municipality.

(2) The day of posting copies of the preliminary list and of publishing the notice under subsection 1 shall be at least eight days before the last day for filing complaints. ^{Time for posting}

Notice
affixed
to list

(3) The clerk shall affix to the outside or cover of each copy of the preliminary list of electors for an election a notice in prescribed form, over his name,

- (a) stating that the list is a preliminary list of all electors for the election prepared as required by this Act;
- (b) setting forth the date on which the list was posted up in the office of the clerk;
- (c) giving notice to all electors to examine the list for the purposes of making additions or corrections to or deletions from the list; and
- (d) stating the last day for filing complaints concerning such additions, corrections or deletions.

Copies
of list

(4) At the time of posting a notice under subsection 1, the clerk shall deliver or mail one copy of the preliminary list to,

- (a) the assessment commissioner;
- (b) every member of the council of the municipality and every trustee of a police village all or part of which is in the municipality;
- (c) the secretary of every local board the members of which are required to be elected at an election to be conducted by the clerk;
- (d) the clerk of the council of the county or of the district, regional or metropolitan municipality in which the municipality is situate;
- (e) the clerk of the municipality responsible for conducting the elections in any combined area for school board purposes;
- (f) the member of the House of Commons and the member of the Assembly representing the electoral district in which the municipality or any part thereof is situate.

Candidates
entitled
to copies

(5) Every candidate for any office in an election is entitled to be furnished by the clerk with two copies of the preliminary list of electors entitled to vote in an election to such office.

Revision
of list

24.—(1) The clerk or an assistant revising officer shall attend at the revision of the preliminary list and shall con-

tinue to do so from day to day or as required until all complaints filed before the last day for filing complaints for revision of the list have been disposed of.

(2) Notwithstanding that the time for filing complaints for revision of the preliminary list under section 23 has not expired, the clerk may proceed to consider such complaints as from time to time may be received and may determine and dispose of them. When complaints may be considered

25.—(1) A person whose name has not been included in the preliminary list for a polling subdivision in a municipality or whose name has been included therein but the information relating to him set out therein is incorrect or whose name has been included therein as a non-resident and who is qualified to be an elector in more than one ward in the municipality may, personally or by his agent, apply to the clerk or assistant revising officer of the municipality on or before the date fixed by the clerk as the last day for filing complaints for revision of the list to have his name included in the list or to have such information corrected or to have his name deleted from the list and to have it entered in the list of another ward in which he or his spouse is the owner or tenant of land. Application to enter name in list or correct information

(2) Every person applying under this section shall sign an application in the prescribed form in which all the information shall be sufficiently filled in, either by the applicant personally or by the clerk or assistant revising officer at the applicant's request, and before entering his name in the list or before correcting the preliminary list, as the case may require, the clerk or assistant revising officer shall satisfy himself that the applicant understands the effect of the statements in the application and that he is an elector entitled to have his name included in the list or to have the list corrected pursuant to his request. Application form

(3) When the language of an applicant under this section is not understood by the clerk or assistant revising officer, an interpreter provided by the applicant may be sworn and may act, but in the event of inability to secure an interpreter, the application may be refused. Interpreter

(4) If it appears to the clerk or assistant revising officer that an applicant under this section understands the effect of the statements in the application and that the applicant is an elector whose name should be included in the polling list or that the amendment thereof that he requests should be made, he shall certify accordingly by signing the application. Decision to amend list

Refusal to
amend list

(5) If, in the opinion of the clerk or assistant revising officer, the statements made by an applicant in his application under this section do not show that the applicant is an elector entitled to have his name included in the polling list or to have the list amended as requested, he shall inform the applicant that his application is refused, stating the reasons for such refusal, which reasons he shall endorse on the application form.

Application
for deletion
of name

26.—(1) At any time after the posting of the preliminary list of electors for a municipality and until the last day for filing complaints for revision thereof, any person may file with the clerk a complaint, in the prescribed form, for deletion from the list of the name of a person who is not entitled as an elector to have his name entered thereon.

Notice to
person
where name
objected to

(2) The clerk, upon receipt of a complaint under this section, shall forthwith cause to be served personally on or sent by registered mail to the person concerning whom the complaint is made at the address given in the preliminary list and at such other address, if any, as may be mentioned in the complaint, a notice requiring such person to appear in person or by his representative before him on a day to be fixed in the notice.

Copy of
complaint to
be served

(3) A copy of the complaint shall accompany a notice served or sent under this section.

Decision of
clerk, etc.

(4) On the day for the hearing fixed in a notice given under this section, the person filing the complaint shall attend before the clerk or assistant revising officer and establish to his satisfaction the validity of such complaint and the clerk or assistant revising officer after receiving an explanation of the facts alleged and after hearing what is alleged by the person concerning whom the complaint was made, may delete the name from the preliminary list if he is satisfied of the validity of the complaint.

Where person
objected to
does not
appear

(5) Where the person concerning whom a complaint has been made under this section does not attend before the clerk or assistant revising officer on the day of hearing fixed in the notice and the clerk or assistant revising officer is satisfied that due notice of complaint has been given to the person or that he could not be found and the registered notice could not be delivered, the clerk or assistant revising officer may delete the name of such person from the preliminary list of electors but shall not do so except upon evidence under oath which satisfies him that the name should not have been included in the list.

27. Subject to section 31 or 54, the decision of the clerk or assistant revising officer to enter on or delete the name of a person as an elector from the preliminary list of electors is final for the purposes of this Act. Decision final

28. Upon determination of all complaints for revision of the preliminary list of electors for a municipality filed on or before the last day for filing complaints for revision thereof, the clerk shall compile a statement of additions and changes to and deletions from the list and shall send a copy of such statement so certified to each person specified in subsections 4 and 5 of section 23 Statement of changes

POLLING LIST

29.—(1) After compilation of the statement of additions, changes and deletions required under section 28, the clerk shall prepare the polling list of electors for each polling subdivision in his municipality by making the appropriate changes in the preliminary list in accordance with the statement and shall certify the list as so revised. Polling list

(2) The clerk shall, in preparing the polling list of electors under subsection 1, enter after the name of every elector who is a tenant and who has filed a declaration under section 15 that he is entitled to be an elector to vote on a money by-law the words "Entitled to vote on the by-law" and an elector shown as a tenant on the list without such words added after his name is not entitled to vote on the by-law. Tenants entitled to vote on by-law

(3) Where a corporation has appointed a nominee to vote on its behalf on a proposed money by-law in accordance with section 16, the clerk shall enter the name of the nominee in the polling list for the polling subdivision in which the corporation has its chief office in the municipality as a nominee of a corporation entitled to vote on the by-law in such polling subdivision and such nominee shall be deemed to be an elector so entitled to vote. Nominee of corporation entered in list

30. Except as provided in sections 31, 49 and 54 no person is entitled to vote at an election unless his name appears in the polling list certified under section 29 for the polling subdivision in which he tenders his vote. Only persons in list entitled to vote

31. —(1) If a person whose name is omitted from a polling list certified under section 29, at any time after preparation of the polling list and prior to the closing of the poll, satisfies the clerk of the municipality on oath that he was during the period of enumeration entitled to be an elector under section 12 or 13 and to have his name entered in a polling list for a polling subdivision in the municipality, the clerk may issue a Entry of name in list by D.R.O.

certificate in the prescribed form authorizing the deputy returning officer for such polling division to enter the name of the elector in the polling list for the subdivision and to permit such person to vote, but such vote must be cast before the closing of the poll.

Idem

(2) Where the name of a person is omitted from the polling list as finally revised and such person was during the period of enumeration otherwise qualified to be entered in the polling list except that he was not a Canadian citizen or other British subject or of the full age of eighteen years, if such person produces for the inspection of the clerk,

(a) where he was not a Canadian citizen or other British subject, his certificate of naturalization or other conclusive evidence that he has become a Canadian citizen or other British subject; or

(b) where he was not eighteen years of age, his birth certificate or other conclusive evidence that he has become eighteen years of age,

the clerk may issue a certificate authorizing the proper deputy returning officer to enter the name of such person in the polling list to entitle him to vote as if his name had been entered therein before the list was revised.

Certificate
to be
produced

(3) A person is not entitled to vote under this section unless at the time he requests a ballot he produces and files with the deputy returning officer the certificate given by the clerk under subsection 1.

Copy to
assessment
commis-
sioner

(4) The clerk shall furnish a copy of each certificate issued under this section to the assessment commissioner.

NOMINATIONS

Who may be
nominated

32. Any person who is qualified to hold an office under the Act constituting the office may be nominated as a candidate for such office.

Nomination
day

33.—(1) Nomination day for a regular election shall be Monday, the twenty-first day before polling day.

Period for
nomination

(2) The period during which candidates in an election may be nominated shall be the four days immediately preceding nomination day and until 5 o'clock in the afternoon of nomination day.

Notice of
nomination
period

(3) The clerk shall publish, at least six days prior to the commencement of the period during which candidates in an

election may be nominated, notice of the time of commencement and closing of such period and of the offices for which candidates in the election may be nominated in a newspaper having general circulation in the municipality and, where there is no newspaper having a general circulation in the municipality, the notice shall be published in such manner as the clerk may direct and shall be posted in at least two conspicuous places in the municipality.

34. -(1) A candidate may be nominated for an office by the ^{How} ^{nominated} filing, during the period in which candidates may be nominated, in the office of the clerk during his normal office hours of a nomination paper in prescribed form, which,

- (a) shall be signed by at least ten electors whose names are entered in the polling lists of electors entitled to vote in an election to such office;
- (b) shall state the name, occupation and address of the candidate in such manner as will identify him and the office for which he is nominated; and
- (c) shall state the name and address of each elector signing the nomination paper and, where the office for which the candidate is nominated is a member of a school board, that such nominator is a public school elector or a separate school elector, as the fact is.

(2) No nomination is valid unless there is filed with the ^{Consent and} ^{declaration} ^{to be filed} nomination paper a consent in writing to the nomination and a declaration of qualification in the prescribed form by the person nominated.

(3) A nomination paper nominating a candidate for an office ^{Public} ^{school} ^{nominators} the holder of which is required to be elected by public school electors shall be signed by public school electors only.

(4) A nomination paper nominating a candidate for an office ^{Separate} ^{school} ^{nominators} the holder of which is required to be elected by separate school electors shall be signed by separate school electors only.

(5) Each candidate for election to an office shall be ^{Separate} ^{nomination} ^{papers} nominated by a separate nomination paper, but an elector may sign the nomination papers of different candidates.

(6) After a nomination paper is filed with the clerk it shall ^{Clerk} ^{to keep} ^{nomination} ^{paper} remain in the possession of the clerk.

(7) The onus is on the person nominated for election to an ^{Onus on} ^{person} ^{nominated} office to file a *bona fide* nomination paper.

Endorsation
by clerk

35.—(1) Where a nomination paper is filed in the office of a clerk, the clerk or his assistant returning officer shall endorse upon it the date and time of its filing.

Certificate
of clerk

(2) Where a nomination paper for a candidate for an office is filed in the office of a clerk prior to nomination day, the paper shall forthwith be examined by the clerk and, if he is satisfied that the requisite number of the nominators whose signatures appear on the nomination paper are electors entitled to vote for the office, he shall so certify in writing.

Posting

(3) As the nomination papers are certified by the clerk he shall cause the name, occupation and address of each candidate nominated and the office for which the candidate is nominated to be posted up in his office or other conspicuous place open to inspection by the public.

Where
filed on
nomination
day

(4) Where the nomination paper for a candidate for an office is filed in the office of a clerk on nomination day and before the time fixed for the close of nominations,

(a) the clerk shall accept the nomination paper and cause the name of the person nominated to be posted up in accordance with subsection 3;

(b) if, on examination of the nomination paper prior to 5 o'clock in the afternoon on the day following nomination day, it appears to the clerk that the requisite number of nominators whose signatures appear on the nomination paper are not electors entitled to vote for the office, he shall reject the nomination and give notice of the rejection immediately by registered mail to the person nominated and all candidates for that office, but if he is satisfied that the nominators meet such requirements, he shall so certify in writing.

Certification
by clerk

(5) Certification by the clerk in accordance with subsection 2 or 4 with respect to a nomination paper shall be conclusive evidence of the facts certified.

List of
candidates

(6) The clerk shall establish and maintain in his office a list setting out the name and residence of every candidate whose nomination has been certified under this section for the respective offices for which candidates may be nominated in the order of certification and copies of this list shall be prominently displayed in one or more locations immediately prior to the time fixed for the closing of nominations.

DEATH OF A CANDIDATE

36. If as a result of a candidate nominated for election to an office dying before the close of the poll for the election, Election on death of candidate

- (a) a person would be elected by acclamation to such office, the election to such office is void and a new election shall be held to fill such office; or
- (b) no person would be elected by acclamation to such office, the name of the deceased candidate shall be omitted from the ballots or if the ballots have already been printed, the clerk shall cause notice of the death of the candidate to be posted up in a conspicuous place in every polling place and the election shall be proceeded with as if the deceased candidate had not been nominated.

WITHDRAWAL OF NOMINATIONS

37.—(1) A person nominated as a candidate in an election may withdraw his nomination by instrument in writing, verified by his affidavit and delivered to the clerk before 5 o'clock in the afternoon of the day following nomination day. Withdrawal of nomination

(2) Where a person has been nominated for more than one office, he may withdraw in respect of one or more offices for which he is nominated by filing his withdrawal in writing with the clerk in his office before 5 o'clock in the afternoon of the day following nomination day and in default he shall be deemed to be nominated for the office for which he was first nominated and to have withdrawn his nomination for any other office. Where nominated in more than one office

ACCLAMATIONS

38.—(1) If no more candidates are nominated for any office than the number to be elected, the clerk shall forthwith after 5 o'clock on the afternoon of the day following nomination day declare that candidate or those candidates duly elected. Acclamation

(2) If more candidates are nominated for an office than the number to be elected but one or more candidates withdraws his nomination so that the number remaining is no more than the number required to be elected, the clerk shall forthwith after 5 o'clock on the afternoon of the day following nomination day declare the remaining candidate or candidates to be duly elected. Idem

Vacancy (3) If the number of candidates declared to be elected to an office under subsection 1 or 2 is less than the number to be elected to such office so that there is a vacancy, a new election shall be held to fill the vacancy.

Where quorum not elected (4) Where in any election the total number of members of the council of a municipality or of a local board, as the case may be, declared elected under this section and those elected as a result of the poll in the election is less than a quorum of the council or of the local board, the council or local board in office for the preceding year shall continue in office until a new election under subsection 3 is held and the number of members of the council or local board equals or exceeds the quorum.

NOTICE OF POLL

Poll required **39.—(1)** Where more candidates are nominated for election to an office than the number required to fill that office, the clerk shall hold a poll to elect the holder of that office.

Notice of poll (2) Notice of the time for the holding of the poll in an election, including the advance poll, shall be given by the clerk forthwith after it has been determined that a poll is required, by publishing in a newspaper having general circulation in the municipality and where there is no such newspaper, the notice shall be published in such manner as the clerk may direct, and shall be posted in at least two conspicuous places in the municipality.

VOTING BY BALLOT

Voting by ballot **40. (1)** Where a poll is held in an election, the votes shall be given by ballot in prescribed form.

Voting machines (2) In place of using ballot papers under this Act, with approval of the Minister, the council of a municipality may by by-law authorize the use at an election of voting machines for one or more polling subdivisions.

PREPARATION AND FORM OF BALLOT

Ballots **41.—(1)** A clerk who is required to hold a poll under section 39 shall prepare and cause to be printed a sufficient number of ballots in the prescribed form for use in the election.

Nomination of candidate must be certified (2) The name of a person shall not be included in a ballot as a candidate for office unless his nomination as a candidate for such office has been certified by the clerk under section 34.

(3) Subject to subsection 5, the names of the candidates shall be shown on a ballot in order of their surnames alphabetically arranged, with given names preceding the surnames, and with the surnames in bold type and the occupation of the candidate shall be stated.

Order of
names

(4) Where there are two or more candidates for election to an office whose given and surnames and occupations are identical or so nearly identical as to create the possibility of confusion, the address of all candidates for election to such office shall be shown on the face of the ballot for such office immediately under their names and in sufficient detail as to identify each candidate.

Where
addresses
to be shown

(5) Except as provided in subsection 4, no identification such as a title, honour, decoration or degree shall be included with any candidate's name on a ballot to be used in an election, but a name commonly called a nickname or any other name by which a candidate is commonly known may be used on the ballot as the name or part of the name of the candidate.

Nicknames
and titles

(6) There shall appear on the ballot to the right of each candidate's name a circle or a circular space suitable for the marking of the ballot.

Space for
indicating
vote

(7) All ballots for election to the same office shall be of the same description and as nearly alike as possible and the names and occupations, and the addresses if given, of the candidates shall be in one colour and the remainder of the face of the ballot shall be another colour, but different colours may be used for ballots to be used for election to different offices.

Ballots for
same office
to be
alike

(8) A ballot may contain instructions as to the number of candidates for which a voter may vote in the following words: "You are entitled to vote for candidates for this office".

Number for
which vote
may be
given

(9) The ballot papers for voting to obtain the assent or the opinion of electors on any by-law or question shall be in the prescribed form.

Ballots re
questions

42.—(1) For an election in a municipality in which the members of council are elected by wards, there shall be prepared one set of ballots for all the polling subdivisions containing the names of the candidates for the office of mayor, another set for all the polling subdivisions containing the names of the candidates for the office of reeve, or reeve and deputy reeve, and another set for each ward containing the names of the candidates for the office of alderman or councillor for the ward.

Wards in
municipality

General
vote in
city or town

(2) For an election in a city or town in which the members of council are elected by general vote, there shall be prepared for all the polling subdivisions one set of ballots containing the names of the candidates for the offices of mayor, or mayor and reeve, or mayor, reeve and deputy reeve, and another set containing the names of the candidates for the office of alderman or councillor.

Borough in
Metro.
Toronto

(3) For an election in a township that constitutes a borough within The Municipality of Metropolitan Toronto, one set of ballots shall be prepared for all the polling subdivisions containing the names of the candidates for the office of mayor, another set of ballots for all the polling subdivisions containing the names of the candidates for the office of controller and another set for each ward containing the names of the candidates for the office of alderman.

Village or
township

(4) For an election in a village or township there shall be prepared one set of ballots containing the names of the candidates for the office of reeve or of reeve and deputy reeve, and for the office of councillor.

By-law
providing
for separate
sets

(5) The council of a town may by by-law provide that the ballots for an election to the offices of mayor, reeve and deputy reeve shall be prepared in separate sets and, the council of a village or township may, by by-law provide that the ballots for an election to the offices of reeve, deputy reeve and councillor shall be in separate sets.

When to be
passed

(6) A by-law for the purposes mentioned in subsection 5 shall be passed not later in the election year than the first day of November and remains in force until repealed, and while in force the prescribed ballots shall be prepared accordingly.

Separate sets
for
controller,
local board,
by-laws, etc.

(7) There shall also be separate sets of ballots,

(a) containing the names of the candidates for the office of,

(i) controller,

(ii) member of a local board,

(iii) trustee of a police village, or

(iv) member of the council of a regional municipality;

(b) for obtaining the assent of the electors on any by-law or the opinion of the electors on any question required or authorized to be submitted to them at an election.

(8) Where more than one by-law or question is to be submitted to the electors at one election, all of such by-laws or questions may be placed on one ballot paper. More than one by-law, etc.

43.—(1) In place of using separate ballots under this Act, the council of a municipality may, by by-law passed and approved by the Minister prior to the first day of November in an election year, authorize the use at a municipal election of composite ballots in such form subject to subsections 1 to 8 of section 41, as the by-law prescribes. Composite ballots

(2) A composite ballot may contain, Contents

(a) the names of candidates for the offices of member of council, member of a school board, member of a public utility commission or member of any other board, commission or body the members of which are required to be elected by the electors of the municipality or for any one or more of such offices; and

(b) any by-law or question authorized or required by law to be submitted to the electors for their assent or opinion.

(3) No elector shall be given a composite ballot containing the names of candidates for an office or containing a question or by-law for which he is not entitled to vote. Not to be given to elector not entitled to vote for office on ballot

(4) A by-law passed under this section remains in force from year to year until repealed. By-law in force until repealed

POLLING PLACES

44.—(1) Subject to section 45, the clerk shall provide for each election at least one polling place for each polling subdivision in a place that is most central or most convenient for the electors and is furnished with light and heat and such other accommodation and furniture as may be required, but the polling place may be provided outside the limits of the polling subdivision. Polling place

(2) Every polling place for an election in a municipality shall be situate in the municipality, except that where a polling subdivision in a township adjoins an urban municipality, the polling place for the polling subdivision may be within the limits of the urban municipality. Idem

(3) Every polling place shall be furnished with compartments in which voters may mark their ballots without other persons being able to see how they are marked and it is the duty of the clerk and the deputy returning officer respectively to Compartments

ensure that a sufficient number of compartments is provided at each polling place.

United
subdivisions

(4) The clerk may unite two or more adjoining polling subdivisions and provide one polling place for the united subdivisions.

Additional
places

(5) The clerk may provide such additional polling places in any polling subdivisions as are required having regard to the extent of the subdivision, the remoteness of any number of its voters from the polling place and number of voters that may conveniently vote at one polling place.

Designation
of places

(6) Where there are two or more polling places in a polling subdivision, each polling place shall be designated by the numbers of the lots and concessions or the numbers and names of the streets at which the electors reside or that designate the properties in respect of which the electors are qualified to vote therein, or by the initial letters of the surnames of the electors who are qualified to vote therein, that is to say, A to M and N to Z, or as the case may be, and an elector is entitled to vote at the appropriate polling place designated accordingly.

Notice of
location of
polling
place

(7) In municipalities having more than 5,000 electors, the clerk shall mail or cause to be delivered to each dwelling unit in the municipality a notice advising the elector or electors therein of the location of the polling place in which that elector or those electors is or are to vote.

Polling
places in
institutions

45.—(1) Where in a municipality there is situate a hospital or other institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or the armed forces of any member of the Commonwealth, or who are blind or deaf, a Workmen's Compensation hospital, a home for the aged, a nursing home or other institution of twenty beds or more, in which chronically ill or infirm persons reside, a polling place shall be provided in such institution or upon the premises, and for the purpose of polling, the institution shall be deemed to be a polling place, and every person resident in the institution who is entered in the polling list shall vote at such polling place.

Attendance
upon patients
to take
vote

(2) Where a patient of such a hospital or other institution is bed-ridden or is unable to walk, it is lawful for the deputy returning officer and poll clerk with the candidates or their scrutineers to attend upon such person for the purpose of receiving his ballot, but no candidate or scrutineer shall be present where the ballot of any such voter is marked under section 61.

(3) When every person whose name is entered in the polling list for a polling place governed by this section has voted, the deputy returning officer for the polling place may close the poll at such polling place, but the vote cast at such polling place shall not be counted until after the close of the regular polling places. ^{Closing of poll}

SUPPLIES AND EQUIPMENT FOR POLLING PLACES

46.—(1) The clerk shall, before polling day, cause to be delivered to every deputy returning officer in his municipality, ^{Supplies for polling place}

- (a) a ballot box for his polling place;
- (b) a sufficient number of ballots to supply the electors in the polling list of his polling place;
- (c) a sufficient number of the prescribed directions for the guidance of voters for the purposes of the polling place;
- (d) the polling list and a blank poll book for the polling place;
- (e) all materials necessary for electors to mark their ballots; and
- (f) such other materials as are prescribed.

(2) A ballot box shall be made of durable material, provided with lock and key, and so constructed that the ballots can be deposited therein and cannot be withdrawn without unlocking the box. ^{Ballot box}

(3) When delivering the ballots for a polling place to a deputy returning officer the clerk shall certify the number of ballots so delivered and upon receiving them the deputy returning officer shall make a count of the ballots and forward the prescribed receipt therefor to the clerk, and shall keep the certificate for return to the clerk with the other documents required to be returned to him under section 76. ^{Clerk to certify number of ballots}

(4) Every deputy returning officer before opening the poll, or immediately after he has received the printed directions from the clerk if they were not received before opening the poll, shall cause them to be placarded outside the polling place and in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. ^{Directions to be placarded}

WHERE AND HOW OFTEN ELECTORS MAY VOTE

Number
of votes
that
may be
given by
an elector

47. An elector whose name appears in the polling list for a polling subdivision or who presents a certificate to vote there under section 31, 48 or 54, is entitled to vote in an election in such subdivision in accordance with the following rules:

1. He is entitled to vote once only for one candidate for mayor, reeve or deputy reeve.
2. He is entitled to vote for as many candidates for controller as there are controllers to be elected but once only for each candidate.
3. Where the election of aldermen, councillors, trustees or members of local boards is by general vote, he is entitled to vote for as many candidates for such offices as there are candidates to be elected but once only for each candidate.
4. Where the aldermen, councillors, trustees or members of local boards are elected by wards, he is entitled to vote,
 - i. if resident in the municipality, in the polling subdivision in which he resides; or
 - ii. if not resident in the municipality, in the polling subdivision in which his name appears on the polling list,

for as many candidates for such offices as there are candidates to be elected for the ward but once only for each candidate.

5. Where the election is to the office of member of a school board to be elected by public school electors in a municipality or a part thereof, or in a combination of municipalities, in which the polling subdivision is located, a public school elector is entitled to as many votes as there are members to be elected by the public school electors in such municipality or part, or combination of municipalities, as the case may be, but may not give more than one vote to any one candidate.
6. Where the election is to the office of member of a school board to be elected by separate school electors

in a municipality or in a part thereof, or in a combination of municipalities, in which the polling subdivision is located, a separate school elector is entitled to as many votes as there are members to be elected by the separate school electors in such municipality or part, or combination of municipalities, as the case may be, but may not give more than one vote to any one candidate.

7. An elector who is entitled to vote in respect of any by-law or question authorized or required by law to be submitted for the assent or opinion of the electors is entitled to vote once only with respect to such by-law or question.

48.—(1) Subject to subsection 2, at the request of a person whose name is entered on the polling list for a polling place in a municipality who has been appointed a deputy returning officer or poll clerk at another polling place, the clerk of the municipality shall give him a certificate that he is entitled to vote at the polling place at which he is stationed during the polling day.

Voting of
D.R.O. and
poll clerk
where
employed

(2) No certificate shall be issued under this section entitling an elector in a municipality that is divided into wards to vote at a polling subdivision in a ward different from the ward in which the polling place at which the elector is otherwise entitled to vote is situate.

Where
municipality
divided into
wards

(3) The clerk shall not give a certificate under this section until he has ascertained by reference to the polling list or to a certificate under section 31 that the applicant is entitled to vote, and after giving the certificate he shall forthwith give notice in writing thereof to the deputy returning officer for the polling place at which the applicant is by the polling list or certificate under section 31 to be entitled to vote, and the person to whom the certificate has been given is not thereafter entitled to vote at such polling place.

When
certificate
may be
given

(4) The certificate shall designate the polling place at which the person is to be permitted to vote.

Certificate

(5) The clerk shall keep a list in which he shall enter before he delivers a certificate under this section,

List of
certificates

- (a) the name and residence of the person to whom he gives the certificate;
- (b) the polling place at which the person is authorized to vote under the certificate;

- (c) the polling place at which the person appears by the polling list to be entitled to vote;
- (d) whether the certificate is granted to such person as deputy returning officer or poll clerk; and
- (e) if a certificate is refused, the name of the person applying for the certificate with the grounds of refusal,

and the list shall be open to inspection by any candidate scrutineer or elector.

Certificate
entitles
person to
vote

49.—(1) A person who produces a certificate given to him under section 48 is entitled to vote at the polling place designated therein, but the certificate does not entitle him to vote there unless he has been actually engaged there as a deputy returning officer or poll clerk during polling day.

Entry in
poll book

(2) The deputy returning officer shall enter or cause to be entered in the column for remarks in the poll book opposite the name and residence of the person voting under the authority of a certificate, the words "Voted under Certificate".

Certificate
to be given
to D.R.O.

(3) A person voting under the authority of a certificate shall deliver it to the deputy returning officer before receiving his ballot.

To be kept
in envelope

(4) The deputy returning officer shall enclose all certificates to which this section applies in one envelope.

PROCEDURE AT POLL

Hours poll
to be
open

50. Every polling place shall be open for the purpose of taking the poll at every election from 11 o'clock in the forenoon until 8 o'clock in the afternoon of polling day.

When
D.R.O. to
attend poll

51.—(1) A deputy returning officer shall attend at the polling place for which he was appointed at least fifteen minutes before the hour fixed for opening the poll.

Counting of
ballots before
opening of
poll

(2) During the period of fifteen minutes before the opening of the poll, the scrutineers who are entitled to be present in a polling place during polling hours are entitled to inspect the ballots and all other papers, forms and documents relating to the poll.

Inspection,
sealing of
ballot box

52. A deputy returning officer shall, immediately before opening the poll at his polling place, show the ballot box to such persons as are present in the polling place, so that

they may see if it is empty, and he shall then lock the box and place his seal upon it in such a manner as to prevent it being opened without breaking the seal, and he shall keep the box on a desk, counter or table or otherwise so that it is raised above the floor in full view of all present, and shall keep the box so locked and sealed until the box is required to be opened for the purpose of counting the votes under section 69.

53.—(1) Where a person tenders his vote, the deputy returning officer shall proceed as follows:

Duties of
D.R.O. on
tender of
vote

1. He shall ascertain that the name of such person or a name apparently intended for it is entered in the polling list for the polling subdivision or that such person is entitled to vote under a certificate issued by the clerk pursuant to section 31 or 48.
2. He shall record or cause to be recorded by the poll clerk, in the proper columns of the poll book, the name and residence of such person.
3. If the deputy returning officer is satisfied that such person is the person designated in the polling list or in a certificate mentioned in paragraph 1 and is otherwise entitled to vote and if no candidate or scrutineer objects to voting by such person, the deputy returning officer shall put his initials on the back of a ballot paper, so placed that when the ballot is folded they can be seen without opening it and shall deliver the ballot paper to such person.
4. If voting by such person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered in the poll book, by writing opposite the name of such person in the proper column the words "*Objected to*" and the name of the candidate by or on whose behalf the objection was made and the deputy returning officer shall require such person to take the prescribed oath.
5. If the deputy returning officer is not satisfied that such person is the person designated in the polling list or in a certificate mentioned in paragraph 1 and is otherwise entitled to vote, although no candidate or scrutineer has objected, he may require such person to take the prescribed oath.
6. If such a person having been required to take the oath refuses to do so, the deputy returning officer

shall enter or cause it to be entered opposite the name of such person in the proper column of the poll book the words "*Refused to be sworn*" or "*Refused to affirm*" according to the fact and a ballot paper shall not be delivered to such person.

7. If such person takes the oath, the deputy returning officer shall enter or cause to be entered opposite such person's name in the proper column of the poll book the word "*Sworn*" or "*Affirmed*" according to the fact, shall put his initials on the back of a ballot paper, so placed that when the ballot is folded they can be seen without opening it, and shall deliver the ballot paper to such person.
8. The deputy returning officer may, and upon request shall, either personally or through the poll clerk, explain to the elector as concisely as possible the mode of voting.

Disqualifica-
tion of
prisoners,
mentally ill,
etc.

(2) A person who on polling day is a prisoner in a penal or reform institution, or a patient in a mental hospital, or who has been transferred from a mental hospital to a home for special care as mentally incompetent is disqualified from voting at any election and no ballot shall be furnished to such a person.

Elector in
polling
place at
closing

(3) Every elector qualified to vote at a polling place who is inside the polling place at the time fixed for closing the poll is entitled to vote.

Entry of
name in
polling list
by D.R.O.

54.—(1) If a person representing himself to be an elector applies to a deputy returning officer at a polling place for a ballot and his name does not appear in the polling list or in a certificate issued under section 31 or 48 as entitled to vote at the polling place, he is entitled to have his name entered in such polling list and to receive a ballot and to vote if he takes a declaration in the prescribed form and otherwise establishes his identity to the satisfaction of the deputy returning officer.

Idem

(2) The deputy returning officer shall enter or cause to be entered in the polling list and on the poll book the name of the elector and shall enter in the poll book a note of his having voted after being sworn as provided in subsection 1.

Where it
appears
person voted
in place
of elector,
etc.

55.—(1) Where an elector entitled to vote at a polling place applies for a ballot paper and it appears that another person has voted as such elector or that an entry has been made in the polling list in error that such elector has polled his vote, if such person takes an oath in the prescribed form and otherwise establishes his identity to the satisfaction of the deputy returning officer he is entitled to receive a ballot paper.

(2) The deputy returning officer shall enter or cause to be entered in the poll book opposite the name of the elector who votes under this section a note of his having voted on a second ballot or of an entry having been made in the polling list in error that he has polled his vote, as the case may be.

Entry in
poll book

56.—(1) An elector who is required to take the oath is entitled to select any one of the prescribed forms of oaths, whatever may be the description in the polling list of the qualification or the character in which he is entered upon it.

Form of oath

(2) No inquiry shall be made of an elector who is required to take the oath except with respect to the matters required to be stated in the oath or to ascertain if he is the person intended to be designated in the polling list.

Inquiry

57. Upon delivery to him of a ballot paper by a deputy returning officer, the person receiving it shall,

Procedure
on receipt
of ballot

- (a) forthwith proceed into the compartment provided for the purpose and shall then and there mark his ballot paper with a cross or other mark with a pen or pencil within the circle or circular space to the right of the name of a candidate for whom he intends to vote;
- (b) then fold the ballot paper so as to conceal the names of the candidates and the marks upon the face of it and so as to expose the initials of the deputy returning officer;
- (c) then leave the compartment without delay, and without showing the face of the ballot paper to anyone, or so displaying it as to make known how he has marked it; and
- (d) then deliver the ballot paper so folded to the deputy returning officer.

58.—(1) Upon delivery of a ballot paper to him by an elector, the deputy returning officer, without unfolding the ballot paper, or in any way disclosing the names of the candidates or the marks made by the elector, shall verify his own initials, and at once deposit the ballot paper in the ballot box in the presence of all persons entitled to be present and then present in the polling place, and the elector shall forthwith leave the polling place.

Duty of
D.R.O. on
receipt of
ballot

(2) A person whose ballot has been placed in the ballot box by the deputy returning officer shall be deemed to have voted.

Person
deemed
to have
voted

(3) The deputy returning officer or the poll clerk shall place his initials in the appropriate column of the poll book opposite the name of every person who has voted for candidates for the office named in that column.

Entry in
poll book

Person not
to take
ballot
from polling
place

59.—(1) A person who has received a ballot from a deputy returning officer shall not take it out of the polling place, and a person who receives a ballot and leaves the polling place without returning it to the deputy returning officer, or returns his ballot declining to vote, forfeits his right to vote, and the deputy returning officer, shall make an entry in the poll book in the column for remarks to the effect that the person received a ballot but took it out of the polling place, or returned it declining to vote, as the case may be, and in the latter case the deputy returning officer shall immediately write the word "*Declined*" upon the ballot and preserve it to be returned to the clerk.

Ballot
accidentally
spoiled

(2) An elector who has inadvertently dealt with his ballot in such a manner that it cannot be conveniently used, upon returning it to the deputy returning officer, is entitled to obtain another ballot, and the deputy returning officer shall immediately write the word "*Cancelled*" upon the first-mentioned ballot and preserve it to be returned to the clerk.

No other
person in
compartment
while elector
marking
ballot

60. Subject to section 61, while an elector is in a compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment or to be in a position from which he can see how the elector marks his ballot paper.

Voter
incapacitated
by blindness,
etc.

61.—(1) On the application of any elector who is unable to read or is incapacitated by blindness or other physical cause from voting in accordance with the other provisions of this Act, the deputy returning officer shall require the elector making the application to take an oath of his incapacity to vote without assistance, and shall thereafter assist the elector by marking his ballot in the manner directed by the elector in the presence of the poll clerk and of no other person and place the ballot in the ballot box.

Blind voter's
ballot
marked by
friend

(2) The deputy returning officer shall either deal with a blind elector in the manner provided in subsection 1 or, at the request of any blind elector who has taken the prescribed oath and is accompanied by a friend, shall permit the friend to accompany the blind elector into the voting compartment and mark the elector's ballot for him.

Oath of
friend

(3) Any friend who is permitted to mark the ballot of a blind elector under subsection 2 shall first be required to take the prescribed oath that he will keep secret the manner in which the blind elector voted.

May act
as friend
only
once

(4) No person shall be allowed to act as the friend of more than one blind elector at any polling place other than a polling place established under section 45.

(5) The deputy returning officer shall enter in the column ^{Entry in poll book} for remarks in the poll book opposite the elector's name the reason why the ballot was marked by him or by a friend of the elector.

62. Where the deputy returning officer does not understand the language of the elector, an interpreter provided by the elector may be sworn in the prescribed form to translate the necessary oaths as well as any lawful questions necessarily put to the elector and his answers, but in the event of inability to secure an interpreter, the elector shall be refused a ballot. ^{Voter who cannot understand English}

63. The deputy returning officer, the poll clerk, the election assistant, the constable or constables, any candidate or, in his absence, his scrutineer, any scrutineer appointed by the council in relation to any by-law or question, and no others shall be permitted to remain in the polling place during the time the poll is open or to be in the polling place at the counting of the votes. ^{Who may remain in polling place}

ADVANCE POLLS

64. -(1) The clerk shall hold an advance poll in accordance ^{Advance poll} with this section on the Monday and Saturday, seven days and two days respectively, before polling day for the purpose of receiving votes of electors who expect to be unable to vote on polling day in the polling subdivisions for which their names appear in the polling lists or who are entitled to vote under a certificate issued by the clerk under section 31 or 54.

(2) The advance poll shall be open from 11 o'clock in the forenoon until 8 o'clock in the afternoon on each of the ^{When poll to be open} two days it is held and polling shall be held so far as possible in the same manner as polling at a regular election.

(3) The clerk shall provide as many polling places for an ^{Polling places} advance poll as he considers necessary and shall appoint a deputy returning officer and poll clerk for each such polling place.

(4) Every person offering himself as a voter at a polling ^{Declaration of elector} place for an advance poll shall be required by the deputy returning officer before being allowed to vote to make the prescribed declaration, which shall be kept by the deputy returning officer with the other records of the poll.

(5) Forthwith after the close of the advance poll on each ^{List of persons voting} day it is held, the deputy returning officer shall make up and deliver to the clerk a list of the names of all persons who have voted showing in each case the number of the

polling subdivision in which the elector is entered in the polling list and the clerk shall, at the request of any candidate, furnish him with a copy of such list.

Duties of
clerk on
receiving
list

(6) Upon receiving the list mentioned in subsection 5, the clerk shall,

- (a) make an entry in the polling list to be supplied to each deputy returning officer on polling day opposite the name of each elector whose name appears in such list and whose vote has been received at an advance poll, showing that such elector has voted; or
- (b) make a certificate in the prescribed form for each polling subdivision, showing the name and address of each elector listed in the polling list for such polling subdivision who has voted at an advance poll, and shall furnish such certificate before the opening of the poll on polling day to the deputy returning officer of the polling subdivision, and the deputy returning officer shall before opening the poll make an entry in the polling list supplied to him, opposite the name of each elector whose name appears on the certificate, showing that such elector has voted.

Sealing
of box

(7) Forthwith after the close of the advance poll on each day it is held the deputy returning officer and any candidate or scrutineer present who desires to do so shall affix his seal to the ballot box in such a manner that it cannot be opened or any ballots be deposited in it without breaking the seals and the deputy returning officer shall forthwith deliver it personally to the clerk for safe keeping.

Opening of
ballot boxes
for advance
poll

(8) On the regular polling day for an election, after the close of polling, the deputy returning officer shall, in the presence of such candidates for office at the election and their scrutineers as are present at the hour fixed for the closing of the poll, open the ballot boxes for the advance poll, count the votes and perform all other duties required of deputy returning officers by this Act.

PROXY VOTING

Who may
vote by
proxy

65.—(1) Any person whose name is entered in the polling list for a polling subdivision and who is,

- (a) a person other than one described in section 45 and who is certified by a legally qualified medical practitioner, by certificate filed with the clerk, to be physically incapable of attending a polling place;

- (b) a person absent from his regular residence by reason of attending an educational institution and who is entered in the list for the polling subdivision in which he normally resides and who expects by reason of such absence to be unable to vote at the advance poll or on polling day; or
- (c) a person who expects to be absent from his polling subdivision during the election period including the advance poll and polling day by reason of his being engaged for hire or reward in the business of transportation by railway, air, water or motor vehicle,

may vote by proxy in that polling subdivision.

(2) Any person who is entitled to vote by proxy pursuant to subsection 1 may appoint in writing in the prescribed form as his voting proxy a person who is entitled to vote in the municipality in which the person voting by proxy is qualified to vote. Who may be proxy

(3) A voting proxy may not act as a voting proxy for more than one person voting by proxy except where the person voting by proxy is the child, grandchild, brother, sister, husband or wife of the voting proxy, in which case a voting proxy may act for more than one such person voting by proxy. May be proxy once only

(4) An appointment of a person as a voting proxy is not valid unless it is made after nomination day and does not remain in force after polling day. Term of appointment

(5) A person who has been appointed a voting proxy may apply to the clerk not later than 5 o'clock in the afternoon of the Tuesday preceding polling day to receive a certificate to vote by proxy for the polling subdivision in which the person appointing the voting proxy is entitled to vote. Application for certificate to vote by proxy

(6) The clerk shall take evidence on oath as to the right of the person appointing the voting proxy to vote in the polling subdivision upon the list for which his name is entered and as to the qualifications of the voting proxy, and, if he finds that the person appointing the voting proxy is duly qualified and that the voting proxy is qualified to act for the person appointing him, he shall give a certificate in prescribed form across the face of the appointment of the voting proxy to that effect. When certificate to be given

(7) Not more than one voting proxy may be appointed on behalf of any person at any election. Not more than one proxy

Oath on
voting

(8) A ballot shall not be delivered to a person who claims to vote as a voting proxy unless he produces his appointment as a voting proxy to the deputy returning officer with the certificate of the clerk thereon as provided in subsection 6 and takes the prescribed oath.

Record of
voting proxy

(9) Where a voting proxy has voted, the deputy returning officer shall record in the poll book the fact that the person appointing the voting proxy voted by proxy and the name of the voting proxy, and shall file the appointment of the voting proxy and the certificate of his appointment given by the clerk with the election papers and return them to the clerk in the envelope provided for that purpose.

Proxy may
vote in
own right

(10) A person who has been appointed as a voting proxy is entitled to vote in his own right in the municipality notwithstanding that he has voted as a voting proxy.

KEEPING OF PEACE: INTERRUPTED ELECTIONS

Assistance of
constables

66. A clerk or a deputy returning officer may require the assistance of constables and other persons to aid him in maintaining peace and order at the election and may swear in as many constables as he considers necessary.

When
election not
commenced or
interrupted

67. If by reason of riot or other emergency the voting at a polling place is not commenced on the proper day or is interrupted after being commenced and before the lawful closing thereof, the clerk or deputy returning officer, as the case may be, shall hold or resume the polling on the following day at 11 o'clock in the forenoon and continue the same from day to day, until the poll has been opened without interruption and with free access to voters for nine hours in all.

COUNTING THE VOTES

Duties of
D.R.O. after
close of poll

68. Immediately after the close of the poll, the deputy returning officer at each polling place shall,

- (a) place all the cancelled, declined and unused ballots in separate sealed envelopes;
- (b) count the number of electors whose names appear by the polling book to have voted and make an entry in the book on the line immediately below the name of the elector who voted last as follows:—"The number of electors who voted at this election in this polling place is (stating the number)" and sign his name thereto.

69.—(1) After compliance with section 68, the deputy returning officer shall, in the presence and in full view of the persons entitled to be present, open the ballot box for the polling place and proceed to count the numbers of votes for each candidate, giving full opportunity to those present to examine each ballot.

(2) In counting the votes, the deputy returning officer shall reject all ballots,

- (a) that have not been supplied by him;
- (b) that contain the names of candidates for one office only and in which votes have been cast for more candidates than are to be elected to the office;
- (c) that are separate ballots submitting a by-law for the assent or a question for the opinion of the electors, and votes are cast for both the affirmative and the negative on the by-law or question; or
- (d) upon which there is any writing or mark by which the elector can be identified, or that has been so torn, defaced or otherwise dealt with by the elector that he can thereby be identified,

but no word, letter, or mark written or made or omitted to be written or made by the deputy returning officer on a ballot voids it or warrants its rejection.

(3) Where a ballot contains the names of candidates for more than one office and votes are cast on such ballot for more candidates for any office than are to be elected to such office, such votes are void and shall be rejected, but unless such ballot is rejected under subsection 2, the votes for any other office in respect of which the elector has not voted for more candidates than are to be elected shall be counted.

(4) Where in a composite ballot,

Composite
ballots

- (a) votes are cast for more candidates for any office than are to be elected to such office; or
- (b) votes are cast for both the affirmative and negative on any by-law or question,

the votes for such candidates or with regard to the by-law or question, as the case may be, are void and shall be rejected but, unless such ballot is rejected under subsection 2, the votes for any other offices, by-law or question in respect of which votes are correctly indicated shall be counted.

Where part
of votes
rejected

(5) Where part of the votes cast in any ballot are rejected under subsection 3 or 4, the deputy returning officer shall note such fact on the back of the ballot and initial the note, and where all the votes on the ballot are rejected under either or both of such subsections, the ballot shall be treated as a rejected ballot.

Objection
by candidate,
etc.

70.—(1) A candidate or a scrutineer at a polling place may object to a ballot or to the counting of votes in any ballot in whole or in part on the ground that the ballot or such votes should be rejected under section 69 and the deputy returning officer at the polling place shall decide the objection, subject to review on a recount or in a proceeding questioning the validity of the election.

Objections to
be listed

(2) The deputy returning officer shall list all objections under subsection 1 to the counting of ballots or of votes therein and number such objections and shall place the number of an objection on the back of the ballot objected to and initial the number.

How votes
counted

71. The deputy returning officer shall count all votes cast at his polling place that are not rejected and shall keep an account of the number of votes so cast and allowed for each candidate and with respect to each by-law or question.

Ballots to
be placed
in separate
packets

72. Following count of the votes at his polling place, a deputy returning officer shall place in separate sealed packets,

- (a) all used ballots that have not been objected to and have been counted in whole or in part;
- (b) all used ballots that have been objected to but which have been counted in whole or in part;
- (c) all rejected ballots;
- (d) all ballots used but unmarked.

D.R.O. to
endorse
packets

73. The deputy returning officer shall endorse every packet of ballots made up by him under clause *a* of section 68 or section 72 so as to indicate its contents and any candidate or scrutineer present may write his name on the packet.

Oath of
poll clerk

74. The poll clerk, immediately after the completion of the counting of the votes, shall take and subscribe the prescribed oath.

STATEMENT AND MATERIALS RETURNED TO CLERK

75.—(1) The deputy returning officer shall make out a ^{Statement of D.R.O.} statement in duplicate of the number of,

- (a) ballots received from the clerk;
- (b) votes given for each candidate;
- (c) votes given for and against a by-law or question;
- (d) used ballots that have not been objected to and have been counted;
- (e) ballots that have been objected to in whole or in part but which have been counted;
- (f) rejected ballots;
- (g) cancelled ballots;
- (h) ballots used but unmarked;
- (i) declined ballots;
- (j) unused ballots;
- (k) voters whose ballots have been marked by the deputy returning officer under sections 45 and 61.

(2) One statement shall be attached to the poll book and ^{Statement attached to poll book} the duplicate statement enclosed in a special packet shall be delivered to the clerk as provided herein.

(3) The statement shall be signed by the deputy returning officer and the poll clerk and such of the candidates or their ^{Statement signed by D.R.O., etc.} scrutineers as are present and desire to sign it.

(4) The deputy returning officer shall deliver to such of the candidates or their scrutineers as are present, if requested to do so, a certificate of the number of ballots counted for each candidate, and of the rejected ballots. ^{Certificate re ballots counted and rejected}

76.—(1) The deputy returning officer shall place in the ^{What to be placed in ballot box} ballot box the poll book, the polling list, the packets containing the ballots and all other documents or packets that served at the election, except,

- (a) the duplicate statement;
- (b) the oath of the poll clerk; and
- (c) the oath of the person, if any, chosen to deliver the ballot box to the clerk.

Box to be
locked, etc.

(2) The deputy returning officer shall then lock and seal the ballot box and forthwith deliver it and the documents enumerated in subsection 1 personally to the clerk.

Oath of
D.R.O.

(3) Forthwith thereafter, the deputy returning officer shall take and subscribe the prescribed oath and shall personally deliver it or transmit it by registered mail to the clerk.

Delivery of
ballot box,
etc., to be
clerk

(4) If the deputy returning officer is unable personally to deliver the ballot box and documents enumerated in subsection 1 owing to illness or other cause, he shall deliver them to the poll clerk for delivery to the clerk, or, where the poll clerk is unable to act, to some person chosen by the deputy returning officer for the purpose of delivering them to the clerk, who shall take the prescribed oath to do so and the deputy returning officer shall thereon, or on a ticket attached thereto, write the name of the person to whom the box was delivered and shall take a receipt therefor, and the poll clerk or person so chosen shall forthwith personally deliver them to the clerk and shall take before him the prescribed oath.

Right of
candidate,
etc., to be
present

(5) The candidates, or their scrutineers, are entitled to be present when the ballot box and documents for a polling place are delivered to the clerk pursuant to this section.

D.R.O. not to
take box to
home, etc.

(6) A deputy returning officer, after the close of the poll, shall not under any circumstances take, or allow to be taken, the ballot box to his home, house, office or place of business, or to any house or place except the office of the clerk.

Clerk to add
up votes

77.—(1) The clerk, after he has received the ballot boxes and other documents referred to in section 76, shall, without opening any of the ballot boxes, cast up from the duplicate statements showing the number of votes for each candidate and for the affirmative or negative on any by-law or question at each polling place the total number of votes for each candidate and the total number of votes for the affirmative or negative on any by-law or question.

Declaration
of result

(2) After casting up the total number of votes cast at an election, the clerk shall, at the town hall or, if there is no town hall, at the clerk's office at noon on the Thursday following the day on which the polling is held, publicly declare to be elected the candidate or candidates having the highest number of votes, and declare the result of the vote with respect to any by-law or question and he shall also post up in some conspicuous place a statement under his hand showing the number of votes for each candidate and for the affirmative or negative on the by-law or question.

(3) If for any cause, the clerk cannot, at the day and hour appointed by him for adding up the votes, ascertain the number of votes given for each candidate, or for the affirmative or negative on any by-law or question he may adjourn to a future day and hour the adding up of the votes and so on from time to time, such adjournment or adjournments not in the aggregate to exceed fourteen days.

78.—(1) Except as provided in this section, the clerk, upon the receipt of a ballot box, and the documents referred to in section 76, shall take every precaution for their safekeeping and for preventing any other person from having access to them, and shall immediately on receipt of the ballot box seal it with his own seal in such a way that it cannot be opened without his seal being broken, and that any other seals affixed to it are not effaced or covered.

(2) Where the documents specified in subsection 1 of section 76 are in error placed in the ballot box or where the duplicate statement cannot be interpreted by the clerk, he may open such ballot box or boxes in the presence of the deputy returning officer concerned and, after having recovered or ascertained the meaning of the statement, as the case may be, the box shall be resealed by the deputy returning officer in the presence of the clerk and by the clerk.

(3) If a deputy returning officer has not delivered the statement of the ballots counted by him to the clerk as required by section 76, the clerk shall after notification to the candidates or their scrutineers, who may be present, open the appropriate ballot box for the purpose of counting the votes and shall count the votes.

79. If a ballot box for any polling place has been destroyed or lost, or, for any other reason, is not forthcoming by the time fixed for adding up the votes, the clerk shall ascertain the cause and, if the statement of the votes cast and certificates, or any of them or copies of them, cannot be procured, the clerk shall ascertain by such evidence as he is able to obtain, the total number of votes given for each candidate at the polling place and for the affirmative or negative on any by-law or question, and may summon any deputy returning officer, poll clerk, election assistant or other person to appear before him at a time and place to be named by him, and the clerk shall notify the candidates of the intended proceedings and may examine on oath such deputy returning officer, poll clerk, election assistant or other person respecting the matter in question.

80.—(1) If upon the casting up of the votes, two or more candidates have an equal number of votes where both or all of

such candidates cannot be elected, or the votes for the affirmative and negative on a by-law or question are equal, the clerk shall publicly declare the result and post up in a conspicuous place a statement showing the number of votes for each candidate and for and against the by-law or question and shall forthwith notify a judge of the result and the judge shall thereupon appoint a time and place to recount the votes cast up for such candidates or concerning such by-law or question.

Application
of ss. 81-88

(2) In such proceedings, sections 81 to 88 apply *mutatis mutandis*.

RECOUNT

Interpre-
tation

81.—(1) In this section and in sections 82 to 84, "judge" means the judge of the county or district court in which the municipality or part thereof or the administrative or head office of the local board is situate.

Where
recount
desirable

(2) If, within fourteen days after the declaration by a clerk of the result of an election, upon an application of a candidate or voter it is made to appear by affidavit to a judge that the votes have been improperly counted or any ballot paper has been improperly rejected or that an incorrect statement of the number of ballots cast for any candidate or for the affirmative or negative on any by-law or question has been made or that the votes have been improperly added up, and if within that time the applicant has given security for the costs in connection with the recount or final addition of any candidate declared elected in the amount of \$100 in legal tender, or if at any time within four weeks after such declaration the council of the municipality whose clerk was the returning officer has by resolution declared that a recount or final addition is desirable in the public interest, the judge shall appoint a time and place to recount or make a final addition of the votes cast at the election, and shall notify the clerk thereof.

Notice of
recount

(3) At least two days notice in writing of the time and place appointed shall be given by the clerk to the candidates and to the applicant, and the clerk or a person appointed by the clerk for the purpose shall attend the recount or final addition with the ballot boxes and all documents relating to the election.

Who may be
present

(4) The judge, the clerk, a person appointed by the clerk, each candidate and his scrutineer appointed to attend the recount or final addition, and such other persons as the council may appoint where the recount or final addition relates to a by-law or question, but no other person, except with the approval of the judge, is entitled to be present at the recount.

(5) Where a recount relates to the election of a candidate, ^{What ballots involved in} the recount shall be of the ballots cast respectively for the ^{recount} candidate declared elected when one only is to be elected or in other cases for the candidate who received the lowest number of votes of those declared elected by the clerk and for the defeated candidate who received the highest number of votes for the same office unless any other candidate in writing requires the ballots cast for him to be recounted or the votes cast for him to be finally added.

(6) At the time and place appointed, and in the presence of ^{Procedure by judge} such of the persons entitled to be present as may attend, the judge conducting a recount or final addition of the votes cast at an election shall make such final addition from the statements returned to the clerk by the deputy returning officers, or recount all the ballots received by the clerk from the several deputy returning officers and the number of votes counted at the election and shall for the purposes of the recount open the sealed packets containing the used ballots that were not objected to and were counted, the ballots that were objected to but which were counted, the rejected ballots, the cancelled ballots, the ballots that were used but were unmarked, the declined ballots and the unused ballots.

(7) Subject to subsection 8, the judge shall proceed according ^{Rules to govern proceedings} to the provisions of this Act for the counting of the ballots and of the vote at the close of the poll by a deputy returning officer, and shall verify and correct the statement of the poll.

(8) If for any reason it appears desirable to do so the judge, ^{Judge may hear any evidence necessary for proper recount} upon the application of any party to a recount, may hear such evidence as he considers necessary for the purpose of making a full and proper recount of the ballots, and, without restricting the generality of the foregoing, he may, if the recount results in any of the candidates for any office being declared to have received the same number of votes as any other candidate or candidates who were parties to the recount, hear such evidence as he considers necessary to determine who was elected to that office.

(9) Upon the completion of a recount all the ballots shall be sealed in their separate packets and upon completion of final ^{Judge to certify recount to clerk} addition, the statements shall be sealed in their respective packets and the judge shall certify the result of the recount or final addition to the clerk.

(10) The judge may require the clerk of the county or district ^{Clerk of court} court to be present at the time and place appointed.

82.—(1) The judge shall delay sending his certificate under ^{Time for sending certificate to clerk} section 81 to the clerk for two days after the completion of

the recount or final addition in order to allow for an appeal as provided in section 86.

If no appeal
clerk to
declare
result

(2) If no notice of appeal is given to the judge within two days after the completion of a recount or his final addition, the judge shall certify forthwith the result to the clerk who shall then declare the candidate having the greatest number of votes to be elected or certify to the council the result of the vote with respect to a by-law or question.

Equality of
votes after
recount
where one
person to be
elected

83. In the case of an equality of votes for candidates for any office for which one person only is to be elected, as a result of a recount or final addition, the successful candidate shall be determined by lot conducted by the clerk.

Costs of
recount

84.—(1) The costs of a recount under section 81 are in the discretion of the judge making the recount who may order by whom, to whom and in what manner the costs shall be paid.

Awarding
of costs

(2) The judge may in his discretion award costs of a recount or final addition to or against any candidate who is a party to it and may fix the amount thereof or order that they be taxed by the clerk of the district or county court on a scale following as nearly as may be the tariff of costs of the county court.

Where no
provision as
to costs

(3) Where the judge makes no provision as to the costs of a recount or final addition, the disbursements made or authorized to be made by the clerk shall be paid by the municipality.

Payment of
deposit

(4) Where costs are directed to be paid by the applicant for a recount or final addition, the money deposited as security for costs under section 81 shall be paid out to the party entitled to such costs, so far as necessary.

Enforcement
of payment
of costs

(5) Payment of the costs awarded under this section may be enforced by execution to be issued from any county or district court, upon filing therein the order of the judge and a certificate showing the amount at which the costs were taxed and an affidavit of the non-payment of them.

Expenses of
judge

(6) The judge is entitled to receive from the municipality the expenses necessarily incurred in attending at the place designated by him for a recount or final addition.

Where no
appeal
documents,
etc., to be
returned
to clerk

85.—(1) Upon expiry of the time for appeal from a decision of a judge on a recount or final addition if no appeal has been

taken, the judge shall cause all the ballots to be sealed in their original packets and upon completion of final addition, shall cause the statements to be sealed in their respective packets and returned to the custody of the clerk.

(2) If an appeal is taken from the decision of a judge on a recount or final addition, the judge shall cause such of the ballots and such of the original statements as are not required for the purpose of the appeal to be sealed in their respective packets and returned to the custody of the clerk. Documents not required on appeal

APPEAL FROM DECISION ON RECOUNT OR FINAL ADDITION

86.—(1) Any party may appeal from the decision of the judge who conducted a recount or final addition other than a decision on a recount or final addition of votes in relation to any by-law or question, by giving notice in writing within two days after the completion of the recount or final addition to the other parties and to the judge of his intention to appeal, and he may by the notice limit the appeal to specified ballots. Appeal from decision of judge

(2) The notice may be served upon the other parties personally, or as a judge of the Supreme Court may direct. Service of notice

(3) Where the appeal is limited, the judge who conducted the recount or final addition shall cause to be sealed the ballots or statements that are the subject of appeal in a separate packet and shall forward them, together with the notice and a certificate showing his findings as to the ballots in dispute, by registered mail to the Registrar of the Supreme Court, but, if the appeal is not limited the judge shall forward all the ballots and other papers to the Registrar, and in either case he shall await the result of the appeal before sending his certificate under section 81 to the clerk. Ballots, etc., to be forwarded to Registrar of Supreme Court

(4) On receipt of the ballots and notice, the Registrar shall forthwith obtain an appointment from a judge of the Supreme Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed. Appointment for hearing

(5) At the time appointed, the judge of the Supreme Court shall recount the ballots or such of them as are the subject of appeal, or review the final addition, as the case may be, and shall forthwith certify his decision to the judge who conducted the recount or final addition, whose duty it is to conform to the decision and to certify the result without delay to the clerk. Procedure on appeal

(6) The judge of the Supreme Court may direct by and to whom, the costs of the appeal shall be paid. Costs of appeal

Idem

(7) Where the judge of the Supreme Court makes no provision as to costs, the disbursements made or authorized to be made by the clerk, shall be paid by the municipality.

DISPOSITION OF ELECTION RECORDS

Disposition
of ballots

87.—(1) The clerk shall retain in his possession for ninety days from the date of the poll for an election all the ballots in the election and, unless otherwise directed by an order of a judge or officer having jurisdiction to inquire as to the validity of the election, shall then destroy them in the presence of two witnesses, who shall make a statutory declaration that they witnessed the destruction of them and such declaration shall be filed in the office of the clerk.

Disposition
of other
documents

(2) Subject to subsection 1, the clerk shall retain in his possession all oaths, nominations, qualification documents, statements of the votes cast, and other documents relating to an election until the successors to the persons elected at such election have taken office, and may then destroy them.

Inspection of
ballots, etc.

88.—(1) No person shall be allowed to inspect any ballot or other document relating to an election in the custody of the clerk except under the order of a judge.

Order of
judge

(2) The order may be made on the judge being satisfied by affidavit or other evidence that the inspection is required for the purpose of maintaining a prosecution for an offence, or corrupt practice, or of taking proceedings for contesting the election or return.

Production
of documents
by clerk

89. Where an order is made for the production by the clerk of any document in his possession relating to an election, the production of it by him in such manner as may be directed by the order is evidence that the document relates to the election, and any endorsement appearing on any packet of ballots so produced is evidence that the contents are what they are stated to be by the endorsement.

NEW ELECTIONS

New
election

90. (1) Where a new election is required under the authority of this or any other Act to fill a vacancy in any office by an election other than a regular election, the clerk of the municipality who is the returning officer with whom nominations may be filed shall set the date of the nomination day which shall be within forty-five days of the day on which the vacancy for which he is required to hold the election occurs.

Procedure

(2) The procedure including the period for filing nominations at a new election shall be the procedure and period applicable

at a regular election of the municipality and polling day shall be not less than eighteen and not more than twenty-one days after nomination day.

(3) The polling required to fill a vacancy in an office by this section shall so far as possible be held in the same manner and by the same officers and take place at the same places, in so far as practicable, at which the polling took place at the last regular election. ^{Polling}

(4) Unless a new preliminary list of electors has been furnished by the assessment commissioner, under subsection 5, the preliminary list to be used for preparation of the polling list for a new election shall be the polling list used at the last regular election, which shall be subject to revision as if it were a preliminary list of electors under section 24 and to additions pursuant to a certificate of the clerk under section 31 and the clerk may fix the times and places for the making of complaints as to revision. ^{List of electors}

(5) Where in the year following an election year the annual enumeration under *The Assessment Act* has, prior to the holding of the new election, been completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election. ^{Idem R.S.O. 1970, c. 32}

(6) Where a vacancy occurs in any office and an election is to be held to fill such vacancy, a person holding any other office is not eligible to be a candidate for the vacant office unless he has, before the first day of the period during which nominations for the new election may be filed, filed with the clerk a certified copy of his resignation from the office that he then holds with evidence satisfactory to the clerk that such resignation has been filed as required by legislation governing the office that he then holds. ^{Eligibility of member to be candidate for other office}

(7) Notwithstanding anything in this or any other general or special Act, a new election shall not be held to fill a vacancy where the vacancy occurs after the 31st day of March of an election year. ^{Vacancy after March 31st of election year}

91. Notwithstanding that a new election becomes necessary, meetings of the council may be held if a quorum of the council is present. ^{Council may meet notwithstanding vacancy}

EFFECT OF IRREGULARITIES

Irregularities
not to offset
result

92. No election shall be declared invalid,

- (a) by reason of any irregularity on the part of the clerk or in any of the proceedings preliminary to the poll;
- (b) by reason of a failure to hold a poll at any place appointed for holding a poll;
- (c) by reason of non-compliance with the provisions of this Act as to the taking of the poll, as to the counting of the votes or as to limitations of time; or
- (d) by reason of any mistake in the use of the prescribed forms,

if it appears to the court having cognizance of the matter that the election was conducted in accordance with the principles of this Act and that the irregularity, failure, non-compliance or mistake did not affect the result of the election.

SECRECY OF PROCEEDINGS

Secrecy of
proceedings

93.—(1) Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting.

Interference
with
voter

(2) No person shall interfere or attempt to interfere with an elector when marking his ballot paper, or obtain or attempt to obtain at the polling place information as to how an elector is about to vote or has voted.

Communica-
tion as to
voting

(3) No person shall communicate any information obtained at a polling place as to how an elector at such polling place is about to vote or has voted.

Inducing
person to
show ballot

(4) No person shall, directly or indirectly, induce or attempt to induce an elector to show his ballot paper after he has marked it so as to make known to any person how he has voted.

Voter not
to show
ballot

(5) Subject to section 61, an elector shall not show his ballot paper, when marked, to any person so as to make known how he voted.

No one com-
pellable to
disclose
his vote

(6) No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state how or for whom he has voted.

OFFENCES, PENALTIES AND ENFORCEMENT

94. Every person who, at an election,

Voting when
not qualified,
etc.

- (a) not being qualified to vote, votes;
- (b) being qualified to vote, votes more times than he is authorized to vote by this Act; or
- (c) votes in a polling subdivision other than one in which he is entitled to vote by this Act,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both.

95. Every person who,

Improper
voting by
proxy

- (a) having appointed a voting proxy to vote at an election, attempts to vote at the election otherwise than by means of such voting proxy while the voting proxy is in force; or
- (b) having been appointed a voting proxy at an election, votes or attempts to vote at the election under the authority of the proxy when he knows or has reasonable grounds for supposing that his appointment has been cancelled or that the elector who made the appointment is dead or is no longer entitled to vote,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both.

96. Every deputy returning officer or poll clerk who wilfully miscounts the ballots or otherwise wilfully makes up a false statement of the poll is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both.

Wilful
miscount
of ballots

97. Every clerk, deputy returning officer or poll clerk who refuses or neglects to perform any of the duties imposed upon him by this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Neglect of
duties

98. Every person who,

Offences
relating to
ballot
papers

- (a) without authority, supplies a ballot to any person;
- (b) places in a ballot box a paper other than the ballot that he is authorized by law to place therein;

- (c) delivers to the deputy returning officer to be placed in the ballot box any other paper than the ballot given to him by the deputy returning officer;
- (d) takes a ballot out of the polling place;
- (e) without authority, takes, opens or otherwise interferes with a ballot box or books or packet of ballots or a ballot in use or used for the purpose of an election;
- (f) being a deputy returning officer, knowingly puts his initials on the back of any paper that is not a ballot, purports to be or is capable of being used as a ballot at an election; or
- (g) attempts to commit any offence mentioned in this section,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both.

False
information
to authorized
persons

99. Every person who knowingly furnishes false or misleading information to any person who by this Act is authorized to obtain information is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both.

Offences of
inducing un-
qualified
person to vote
or publishes
false state-
ment of with-
drawal of
candidate

100. Every person who,

- (a) induces or procures any person to vote knowing that that person has no right to vote; or
- (b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both.

Bribery;

101.—(1) Every person who,

bribing
elector or
procuring
bribery by
money

- (a) directly or indirectly, himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure or to endeavour to procure any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any

elector having voted or refrained from voting at an election; or

- (b) directly or indirectly, himself or by any other person on his behalf, gives or procures or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavour to procure any office, place or employment to or for any elector, or to or for any other person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at an election; or by gift or offer or promise of employment
- (c) directly or indirectly, himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement, to or for any person, in order to induce such person to procure or endeavour to procure the return of any candidate, or the vote of any elector at an election; or to induce anyone to procure return of candidate or endeavour to procure
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any candidate, or the vote of any elector at an election; or receiving bribe to procure return of candidate
- (e) advances or pays, or causes to be paid, money to or to the use of any other person, with the intent that such money or any part of it shall be expended in corrupt practices at an election, or who knowingly pays or causes to be paid money to any person in discharge or repayment of money wholly or in part expended in corrupt practices at an election; or advancing money to be spent in corrupt practices
- (f) directly or indirectly, himself or by any other person on his behalf, on account of and as payment for voting or for having voted, or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for having illegally assisted or agreed to assist any candidate at an election, applies to such candidate for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration, or for any office, place or employment, or the promise of any office, place or employment; or applying for money or employment in consideration of voting
- (g) before or during an election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or receiving money, office, etc., for having voted

valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at an election; or

receiving money corruptly after election

- (h) after an election, directly or indirectly, himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting at an election; or

giving or promising office to candidate to stand or withdraw

- (i) in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure, or endeavours to procure any office, place or employment for such person, or for any other person,

is guilty of bribery, and on summary conviction is liable to a fine of \$200, or to imprisonment for a term of not more than six months, or to both, and is disqualified from voting at any election for four years.

Personal expenses of candidate

(2) The actual personal expenses of a candidate, his reasonable expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising and other lawful and reasonable expenses in connection with the election, incurred by the candidate in good faith and without any corrupt intent, shall be deemed to be expenses lawfully incurred, and the payment thereof is not a contravention of this Act.

Posting of provisions as to corrupt practices

(3) The clerk shall furnish every deputy returning officer with at least two copies of this section, and the deputy returning officer shall post them in conspicuous places at the polling place.

General offence

102. Every person who contravenes any of the provisions of this Act, for which contravention no penalty is otherwise provided, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Disqualification of persons guilty of corrupt practice

103.—(1) Where a candidate at an election is convicted of bribery or of committing a corrupt practice, he is ineligible to be nominated and stand as a candidate at any election up to and including the next regular election, or to hold any office at the nomination of a municipal council or local board for four years following the date of the poll.

(2) If, when the candidate is convicted of committing a corrupt practice, the presiding judge finds that the act constituting in law a corrupt practice was committed without any corrupt intent, the candidate is not subject to the penalties and disabilities provided by subsection 1. Limitation

CORRUPT PRACTICES AND CONTROVERTED ELECTIONS

104.—(1) The validity of an election or of the election of any person to any office at such an election or whether or not any person is guilty of a corrupt practice respecting an election shall be tried and determined by an action commenced by issuing a writ in the county or district court for the county or district in which the municipality or the administrative or head office of the local board is situated. Validity of election, etc., determined by action

(2) Where the county or district court determines that a person has committed a corrupt practice it may, in addition to any other penalty or order, impose the penalties provided therefor under sections 94 to 100. Penalties for corrupt practice

(3) A candidate at an election or any elector entitled to vote at an election referred to in subsection 1 may commence an action under this section in relation to such election. Who may commence action

(4) No action shall be commenced after the expiration of ninety days following the date of the poll at the election referred to in subsection 1. Time for commencing action

105.—(1) The judge shall, in a summary manner and without formal pleadings, hear and determine the questions raised by or upon an action under section 104 and may give directions as to the conduct thereof and may inquire into the facts on affidavit, by oral testimony, or by trying an issue framed by him, or by one or more of those means. Mode of trial

(2) Subject to subsection 1 and where not otherwise provided in this Act, the practice and procedure of the county or district court apply to an action commenced under section 104. Idem

(3) The action shall be tried by a judge without a jury. Judge without jury

106.—(1) At the time of the commencement of an action, security shall be given on behalf of the plaintiff to be applied towards payment of all costs, charges and expenses, if any, that may become payable by the plaintiff, including the costs and charges of the clerk incurred in the publication of notices in the municipality in respect of the writ of the action or proceedings therein. Security for costs

- Idem** (2) The security shall be in the amount of \$400 and shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario.
- Abatement of action** **107.**—(1) An action abates on the death of a sole plaintiff or the survivor of several plaintiffs.
- Liability for costs** (2) The abatement of an action does not affect any liability for costs previously incurred.
- Substitution of plaintiff** (3) On the abatement of an action any person who might have been a plaintiff may apply to a judge of the court or, during the trial, to the trial judge to be substituted as the plaintiff.
- Substitution for unqualified person** **108.** Where a plaintiff is not qualified to be a plaintiff in an action under this Act, the action shall not on that account be dismissed if, within such time as a judge of the court or, during the trial, the trial judge allows for that purpose, another plaintiff is substituted and substitution shall be made on such terms and conditions as the judge considers proper.
- Successful candidate guilty of corrupt practice** **109.**—(1) Where it is determined that a successful candidate is guilty of bribery or of a corrupt practice, the court may declare his election void and his office shall thereupon become vacant.
- Unseating and seating of another elected candidate** (2) Where the election of any person is declared void, the court may order that he be removed from office and, if it is determined that any other person would have been elected but for the corrupt practice that he be admitted to take his seat in the council or board or, if it is determined that no other person is elected, a new election shall be held.
- Where commission of corrupt practice affected result of election** (3) Where it is determined that any person is guilty of bribery or of a corrupt practice and that the commission of the bribery or corrupt practice affected the result of the election, the court may declare the election void and a new election shall be held.
- Where act of election official affected result of election** (4) Where it is determined that any act or omission of an election official affected the result of an election, the court may declare the election void and a new election shall be held.
- Compensation of candidates where election void** (5) Where a new election is to be held, the court may make such order as it considers just against any person who is found guilty of an offence or of bribery or a corrupt practice under this Act for the compensation of candidates at the void election not exceeding \$2,000 per candidate.
- Judgment to clerk** (6) The clerk of the court shall forward a copy of the judgment and the reasons for judgment to the clerk of the municipality.

110. If the court determines that a member was not duly elected, notwithstanding that an appeal from the decision is pending, he is not entitled to sit or vote on the council or board until the appeal is disposed of and the judgment of the court on appeal is received by the council or local board, but where the court determines that some other person was elected or is entitled to the seat, such person is, notwithstanding that an appeal is pending, entitled to take his seat and to sit and vote until the appeal is disposed of and the judgment of the court on appeal is received by the council or local board.

Where election set aside and appeal entered

111. A new election shall not be held until after the expiration of the time limited for appeal from the determination of the court that the election is void and, if an appeal is brought, the election shall not be held pending the appeal.

New election not to be held pending appeal

112. (1) An appeal lies from the judgment of the county or district court to the Divisional Court in accordance with the rules of court.

Appeal to Divisional Court

(2) The Divisional Court may give any judgment that ought to have been pronounced or may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or to another judge and, subject to any directions of the Divisional Court, the case shall thereafter be proceeded with as if there had been no appeal.

Judgment or new trial

(3) An appeal lies from the decision of the trial judge to whom the case was remitted by the Divisional Court in accordance with the provisions of this section.

Appeal from decision on new trial

113. Any person elected may, at any time after the election and before it is complained of, deliver to the clerk of the municipality a disclaimer, signed by him, to the following effect:

Disclaimer before complaint

"I, A.B., hereby disclaim all right to the office of
.....for the.....of
.....in the county (or district) of
.....and all defence of any right I may
have to the same. Dated.....day of
....., 19.... A.B."

114. A person whose election is complained of, unless it is complained of on the ground of bribery or of a corrupt practice

Disclaimer after complaint

on his part, may, within one week after service on him of the writ, transmit by registered mail, or deliver to the judge of the court, and to the applicant or his solicitor, a disclaimer signed by him to the following effect:

"I, A.B., upon whom a writ, authorized by *The Municipal Elections Act, 1972*, has been served for the purpose of contesting my right to the office

of....., in the county (or district)

of....., hereby disclaim the office, and all defence of any right I may have to the same.

Dated.....day of....., 19....
A.B."

Duplicate
of disclaimer
to clerk

115.—(1) A person disclaiming shall deliver a duplicate of his disclaimer to the clerk of the municipality, and the clerk shall forthwith communicate it to the council.

Operates as
resignation

(2) A disclaimer in accordance with section 113 or 114 operates as a resignation.

Relief from
costs

(3) A disclaimer in accordance with section 114 relieves the person making it from all liability for costs in an action under section 104.

Procedure
substituted
for *quo*
warranto
proceedings

116. Proceedings for the removal from office of a person whose election is alleged to have been undue or illegal, or who is alleged not to have been duly elected, and proceedings to have the right of a person to sit in a council determined shall be had and taken under the provisions of this Act and not by *quo warranto* proceedings or by an action in any court.

Regulations

117. The Minister may make regulations,

- (a) prescribing forms for the purposes of this Act; and
- (b) prescribing rules for the use of voting machines.

Repeals

118. The following are repealed:

1. *The Municipal Franchise Extension Act*, being chapter 288 of the Revised Statutes of Ontario, 1970.
2. Paragraph 24 of the schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98.
3. *The Voters' Lists Act*, being chapter 485 of the Revised Statutes of Ontario, 1970.

119. This Act comes into force on a day to be named by ^{Commence-}
the Lieutenant Governor by his proclamation._{ment}

120. This Act may be cited as *The Municipal Elections Act*, ^{Short title}
1972.

